

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company,
Complainant,

v.

Docket No. EL00-95-019

Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independent System Operator and the
California Power Exchange,
Respondents.

Investigation of Practices of the California
Independent System Operator and the
California Power Exchange

Docket No. EL00-98-018

Arizona Public Service Company

Docket No. ER01-1444-001

Automated Power Exchange, Inc.

Docket No. ER01-1445-001

Avista Energy, Inc.

Docket No. ER01-1446-001

California Power Exchange Corporation

Docket No. ER01-1447-001

Duke Energy Trading and Marketing, LLC

Docket No. ER01-1448-002

Dynegy Power Marketing, Inc.

Docket No. ER01-1449-002

Nevada Power Company

Docket No. ER01-1450-001

Portland General Electric Company

Docket No. ER01-1451-002

Public Service Company of Colorado

Docket No. ER01-1452-001

Reliant Energy Services, Inc.

Docket No. ER01-1453-002

Sempra Energy Trading Corporation

Docket No. ER01-1454-002

Mirant California, LLC, Mirant Delta, LLC

Docket No. ER01-1455-002

and Mirant Potrero, LLC

Williams Energy Services Corporation

Docket No. ER01-1456-002

ORDER DISMISSING REHEARING REQUESTS

(Issued May 7, 2001)

On March 9, 2001, the Commission issued an order in Docket No. EL00-95-017, et al., directing sellers of electricity into markets operated by the California Independent System Operator Corporation (ISO) and the California Power Exchange Corporation (PX) to provide refunds (or offsets) of excess amounts charged for certain sales during January 2001, or, alternatively, to provide further justification for the charges.¹ The March 9 Order established a proxy market clearing price for the month of January 2001, above which transactions occurring during a Stage 3 emergency would be subject to refund or would require further justification. The January proxy market clearing price of \$273/MWh was based on, among other things, January natural gas prices, January NOx allowance costs, and an average NOx emissions rate.²

In the March 9 Order, the Commission established a specific procedure for determining the proxy market clearing price, based on the same indices, for subsequent months:

The Commission hereby announces that it will determine a proxy market clearing price for each month through April 2001, based on the above indices. With respect to transactions made after January 2001, the Director of the Commission's Office of Markets, Tariffs and Rates is hereby directed to issue a notice of the monthly proxy market clearing price within fifteen (15) days after the end of each calendar month. Within seven (7) days after such notice is issued, public utility sellers with transactions made above the relevant proxy market clearing price are hereby required to inform the Commission of their chosen option, as discussed above, and to follow the procedures discussed above.³

Pursuant to this delegated authority, the Director of the Office of Markets, Tariffs and Rates (Office Director) issued a notice of the proxy price for February wholesale transactions on March 16,

¹San Diego Gas & Electric Co., et al. 94 FERC ¶ 61,245 (2001), reh'g pending (March 9 Order).

²Id. at 61,863.

³Id. at 61,864 (footnotes omitted).

2001.⁴ Similarly, the Office Director issued a notice of the proxy price for March transactions on April 16, 2001, in Docket No. EL00-95-028, et al. (April 16 Notice). The Notices also list the public utility sellers with transactions over the proxy price for each month and the total amount of refund potential for each seller.

Numerous parties sought rehearing of the March 9 Order.⁵ Many of these rehearing requests also challenge the March 16 Notice, asserting, e.g., that it "perpetuates and compounds the errors inherent in the March 9 Order."⁶ In addition, several parties filed separate rehearing requests regarding the March 16 Notice or the April 16 Notice.

We will dismiss the requests for rehearing of the March 16 Notice and April 16 Notice on procedural grounds. The March 9 Order laid out the methodology and defined the indices that would be used for the subsequent notices. The Office Director had no discretion in carrying out the calculations required to issue the notices. Any arguments or issues pertinent to the proxy price methodology underlying the notices should have been raised on rehearing of the March 9 Order, and will be considered in conjunction with rehearing of that order.

Further, Rule 713(a)(1) of our regulations, concerning requests for rehearing, states that it is applicable "to any request for rehearing of a final Commission decision or other final order,"⁷ and the notices are not final Commission decisions or other final orders with respect to refunds owed by public utility sellers. As explained in the March 9 Order, sellers will choose whether they will refund the amounts in excess of the proxy market clearing price or will supply further cost or other justification for the prices they charged. In the latter case, the order specifies that "the Commission will order refunds if, after examining the additional data, it finds the charges associated with any bids to be unjust and unreasonable."⁸ Thus, a further Commission order will issue against which rehearing may be sought. Because the notices are interlocutory actions not subject to requests for rehearing, we will dismiss the parties' requests for rehearing.

⁴San Diego Gas & Electric Co., et al., unpublished notice issued in Docket No. EL00-95-018, et al. (March 16 Notice).

⁵On April 23, 2001, the Commission issued an order granting rehearing for the purpose of further consideration. The Commission will issue an order on the merits of the requests for rehearing of the March 9 Order at a later date.

⁶Request for rehearing of the City of San Diego at 11.

⁷18 C.F.R. § 385.713(a)(1) (2000) (emphasis added).

⁸March 9 Order at 61,863.

The Commission orders:

Requests for rehearing of the March 16 Notice and the April 16 Notice are hereby dismissed.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.